IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No.4449 of 2005

Hallubai Ismail Alibhai ..Petitioner

vs.

1. The Registrar,
Cooperative Societies and
and others ..Respondents

Shri A.Z.Mookhtiar for petitioner
Smt.P.Z.Cardoza, A.G.P. for respondent nos.1,2 and 8
Shri Prashant Naik for respondent no.4.

CORAM: A.P.SHAH AND
DR.D.Y.CHANDRACHUD JJ.
25th July, 2005

P.C.

1. The petitioner before us is the mother of respondent no.5. Respondent no.5 during the period 1994-95 obtained loan from respondent no.4 Bank to the tune of Rs.10,00,000/- for purchase of textile machinery. The loan was secured by hypothetication of all the textile machinery and stock as well as mortgage of 3 galas being gala nos. 24, 25 and 26 in Shailesh Industrial Estate No.3 Premises Cooperative Society, Vasai Road. The respondent no.5 executed a mortgage deed in favour of respondent no.4 Bank and the same was witnessed by the petitioner. The petitioner also executed a writing on a stamp paper stating that she has no objection to mortgage the property.

2. The respondent no.5 failed and neglected to pay the dues of respondent no.4 Bank. Respondent no.4, therefore, initiated recovery proceedings under sec.101 of the Maharashtra Cooperative Societies Act, 1960 and on 29th April, 1999 recovery certificates were granted in favour of respondent no.4. Respondent no.5 preferred appeals under sec.152 of the Act which were dismissed on 26th November, 2002. Thereafter respondent no.4 initiated execution proceedings and attached the properties of respondent no.5 which consist of textile machinery stock and 3 galas which were mortgaged with respondent no.4 Bank. It appears that inspite of the attachment levied on the hypothecated machinery respondent no.5 broke open the seal and removed part of the machinery which was under attachment. Respondent no.4 has filed a police complaint in respect of removal of the hypothecated machinery.

3. Respondent no.4 Bank on 3 occasions i.e. on 11th February, 2004, 9th August, 2004 and 3rd February, 12005 had issued public advertisements in the local newspapers for auctioning the aforesaid 3 galas and invited bids from public. On two occasions the auction sale had to be postponed either for want of bidder or the offers received were much below the reserve price. Pursuant to the last advertisement issued on 3rd February, 2005

respondent no.6 offered the amount of Rs.12.25 lakhs. On receipt of this offer, respondent no.4 bank intimated to respondent no.5 that it had received highest offer of Rs.12.25 lakhs and called upon him to clear the loan arrears failing which the property would be sold. To this letter no response was given by respondent no.5 and consequently the Bank accepted the offer of respondent no.6 being highest offer received. Respondent no.6 has paid the entire consideration and he has been put in possession of the aforesaid 3 galas on 15th June, 2005. This belated petition filed by the mother is obviously an afterthought and she is being set up by the son who has failed to discharge his debt. Petition is dismissed.